



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1998

Ms. Tenley A. Aldredge
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR98-2183

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID#118013.

The Travis County District Attorney's Office (the "district attorney") received a request for "full access to [two specified cause numbers'] materials, including but not limited to all investigative findings." In response to the request, you submit to this office for review the information which you assert is responsive. You state that the district attorney is releasing some of the requested records, which are specifically made public under section 552.022(17) of the act.¹ However, you contend that the remaining requested information is excepted from public disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the arguments and exceptions you raise and reviewed the submitted information.

As a preface to our discussion, we note that this office has previously addressed a request for related information from another requestor. In Open Records Letter No. 97-1441 (1997), our office specifically addressed the release of information pertaining to "the Ruben Shumake file," which you represent to be the same case file as the one at issue in this pending request.

We first address your claim that the requested information is excepted from disclosure under section 552.108, since you assert that section 552.108(a)(3) and 552.108(b)(3) except all of the submitted information from disclosure. Section 552.108 of the Government Code, the "law enforcement" exception, provides:

¹As you have noted, documents filed with a court are public documents and must generally be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. You assert that because the requestor sought the entire criminal case file, the records are protected in their entirety under *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). In *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and that, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), "the decision as to what to include in [the file] necessarily reveals an attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. You have submitted to this office documents which you indicate constitute the district attorney's entire litigation file, and assert that "[the district attorney's office] obtained or prepared the requested information in Exhibits A-F in the course of preparing for criminal prosecution of this case. The information reflects the mental impressions and/or legal reasoning of the prosecutors handling this case, in that it reflects the prosecutors' legal theories and conclusions as to what issues they considered important."

Upon review of the submitted information and the preceding analysis under *Curry*, we conclude that most of the information was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation, or represents the mental processes or legal reasoning of an attorney representing the state. Therefore, we agree that most of the submitted records are excepted under section 552.108(a)(3),² as information that reflects the mental impressions or legal reasoning of the prosecuting attorneys, and may be withheld.³

As noted above, this office has previously ruled, in Open Records Letter No. 97-1441 (1997), on the same records at issue in this request. However, in Open Records Letter No. 97-1441 (1997), this office made the determination that your office had not shown how the submitted telephone messages reflected the prosecuting attorneys' mental impressions or legal reasoning, although to the extent that the prosecutor highlighted or made notations on the records, the information could be withheld from disclosure under section 552.108(a)(3). In this ruling, based on additional arguments in support of withholding the telephone messages under section 552.108(a)(3), we conclude that you have demonstrated that the telephone messages reflect the mental impressions and/or legal reasoning of the prosecutor. Therefore, under the facts and arguments presented, we conclude that the telephone messages included in the prosecutors' file may be withheld. However, pursuant to section 552.007, once a governmental body releases non-confidential information to a member of the public, then it must release the information to all members of the public who request it. See Open Records Decision Nos. 454 (1986), 400 (1983). A governmental body may not practice selective disclosure. Gov't Code § 552.007(a); Open Record Decision Nos. 490 (1988), 464

²As you have noted, "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure and must be released, unless subject to an applicable exception. Gov't Code § 552.108(c); see generally *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

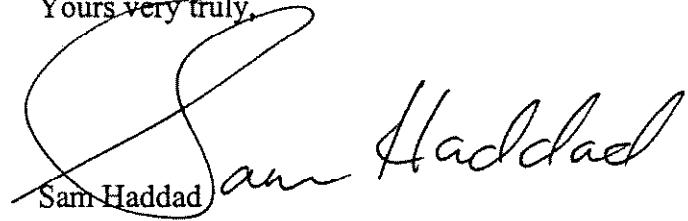
³We note, however, if the requestor seeks particular or specific records within the responsive files, section 552.108(a)(3) may not be applicable.

(1987), 463 (1987), 192 (1978). Consequently, if the district attorney's office has previously released the telephone messages at issue, you must also release them to the requestor in this pending request. If you have not previously released them, you may withhold them pursuant to section 552.108.

Finally, we note that some of the submitted information may be subject to access provisions outside of the Open Records Act. You have submitted to this office photocopies of photographs related to the prosecution at issue. Section 11 of article 49.25 of the Texas Code of Criminal Procedure provides that autopsy reports, including the full report and detailed findings of an autopsy, are public records.⁴ See Open Records Decision No. 529 at 4 (1989); *Whitfield v. State*, 492 S.W.2d 502, 505 (Tex. Crim. App. 1973). To the extent the photographs are a part of the autopsy reports the related photos must be released.

As we resolve this matter under section 552.108, we need not address your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 118013

Enclosures: Submitted documents

cc: Mr. Karl Johnson
Ward & Johnson
106 East 6th Street, Ste. 900
Austin, Texas 78701
(w/o enclosures)

⁴You had asserted that the photographs are protected from disclosure in order to protect the common-law privacy of the individuals. We note that common-law privacy would be inapplicable in any event because an individual's privacy rights lapse upon the death of the individual. Open Records Decision No. 271 (1981).